

Planning for Public Health

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The creation and annexation of cities is an intentional act of politicians that can form man-made enclaves comprised of homogenous socioeconomic groups. Concentrating resources concentrates power, resulting in a trajectory to upward mobility that is steeper for some than others. While localism is touted as a government theory that gives the power to the people in order to ensure a tailored living experience, the ability of a city to draw its own boundaries to ensure that the beneficiaries of the tax base are those in power strips power from marginalized populations that live outside of these artificial barriers. A reverberating effect of local statutes that permit cities to be created with ease and with minimal oversight is the public health crisis that often results from a lack of public service, strained police/community relations, and a dearth of optimal public education and employment opportunities. This Article examines the theories and processes cities adhere to when constructing laws that govern the annexation and creation of cities, and examines the public health implications of such processes and theories. Despite critiques of a purely localist approach, this Article recognizes solutions at the federal level are quickly diminishing.

Although the conclusion sets forth a state-level compromise, the danger of this approach is also explored given recent public health emergencies that have resulted in cities, such as Flint, Michigan, due to state power. The problem has no simple solution, however. The refusal of municipalities to acknowledge that there is a problem with socioeconomic and racial segregation through seemingly objective city planning methods is the central issue that should, at a minimum, be acknowledged by those elected to represent their constituents.

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I. INTRODUCTION

In *Equitable Fiscal Regionalism*, Matthew Parlow defines localism as, “a descriptive and normative theory of a system of decentralized, independent local governments that fosters self-interest and unilateral decision making.”¹ Parlow outlines the main arguments in favor of localism: efficiency, innovation, democratic process, and political incentive.²

[T]he ability of consumer-voters to “vote with their feet” and leave one locality that fails to meet their needs and interests for another . . . creates an efficient local government market place . . . Citizens can freely choose where to live or relocate and can thus “shop” for the local government that best meets their needs, interests, and desires.³

The localist perspective on the “consumer-voter” marketplace ignores populations who cannot “vote with their feet” due to a lack of economic mobility to “freely choose where to live.” This reality becomes especially apparent in times of crisis.

The consequences of legal localism on immobile populations are demonstrated clearly in the context of Hurricane Katrina. David Troutt examines de facto segregation in New Orleans, and the consequences of white flight and sprawl from the city. White citizens of New Orleans, between 1950 and 2000, relocated to neighboring parishes in massive proportions.⁴ Troutt points to Jefferson Parish as the primary destination for most of the migrating white population: “By 2000, a majority of the metropolitan population lived outside New Orleans; Jefferson Parish’s population was nearly equal to the city, and . . . sprawl offered newer homes and shorter commutes on (usually) higher ground.”⁵ Wealthy, white suburban populations strategically utilized “race-neutral” zoning ordinances to exclude lower-income residents from infiltrating their municipal boundaries, effectively maintaining racial segregation between

¹ Matthew J. Parlow, *Equitable Fiscal Regionalism*, 85 TEMP. L. REV. 49, 49 (2012).

² *Id.* at 55.

³ *Id.* (footnotes omitted).

⁴ David D. Troutt, *Katrina’s Window: Localism, Resegregation, and Equitable Regionalism*, 55 BUFF. L. REV. 1109, 1129 (2008).

⁵ *Id.* at 1130–31.

the boundaries of urban and suburban parishes.⁶ As a result, when Hurricane Katrina hit in 2005, almost 80% of Orleans Parish was inundated, and “Hurricane Katrina’s force fell disproportionately on the city’s huge population of very poor people.”⁷

Municipal annexation creates and maintains racial and socioeconomic segregation, and the devastating effects of a heavy localist approach to municipal annexation are illustrated outside of disaster scenarios, such as Katrina. This Article will illustrate the public health effects of concentrating annexation power at the local level. After focusing on the process of creating cities in Missouri and explaining adverse health effects from rampant creation, this Article will examine national trends. It is imperative to examine the federal government’s agenda in the urban planning landscape to understand how disappointment is inevitable for those seeking mitigation of health inequities at this level of government. The role of the state remains uncertain, but, nevertheless important as a manufactured public health crisis continues to affect vulnerable populations.

II. CREATION OF CITIES IN MISSOURI

The process of city creation in Missouri is quite simple. A number of voters equal to 15% of the votes cast in the last gubernatorial election in the area sought to be incorporated must come together and petition the county in which their proposed city will lie.⁸ The petition must include a plat of the proposed city, the approximate population, the approximate value of all real and personal property in the area, and facts proving that the new city will be able to set up its own municipal government.⁹ Once the county is satisfied that the petition meets these statutory requirements, the question of incorporation is submitted for a vote of the people.¹⁰ If a majority of the voters vote for incorporation, then the county shall declare the new municipality to be the “city of” or “town of”¹¹ The county will then make an order designating the first officers of the new municipality, who will hold office until the municipality holds its first election.¹²

Incorporation comes with the advantages of limited autonomy through municipal government, revenue generation through taxation, and gaining local

⁶ See *id.* at 1147 (discussing the impact of five Supreme Court cases on the solidification of local autonomy over land-use and zoning regulation, and the resulting de facto segregation following the end of de jure segregation).

⁷ *Id.* at 1142.

⁸ MO. ANN. STAT. § 72.080 (West Supp. 2018).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

services like a city police department and city utilities.¹³ However, many may not want to be subjected to an added form of taxation and governmental control, and thus may oppose incorporation for those reasons.¹⁴

III. THE DEMOGRAPHICS OF FERGUSON AND ST. LOUIS COUNTY

At the last census, there were approximately 14,297 black individuals and 6,206 white individuals living within the City of Ferguson.¹⁵ Comparatively, St. Louis County reported approximately 233,029 black individuals and 701,948 white individuals living in the county.¹⁶ Currently, there are a staggering ninety-one municipalities inside St. Louis County.¹⁷ The smallest of these municipalities had a population of thirteen at the last census.¹⁸

In the county's early history, few incorporations took place. The five municipalities that existed after the Civil War developed as railroad travel increased, because these cities had trains passing through.¹⁹ It was not until after World War I ended when the area experienced new suburban growth that the number of incorporations took off.²⁰ This growth in incorporations may have also been propelled by certain political and racial groups' need to protect their perceived interests in the era of the Civil Rights Movement.²¹ Over half of St. Louis County's municipalities were incorporated during this time, specifically from 1935 to 1957.²² Since the second half of the twentieth century, most incorporations in St. Louis have centered around a specific social or economic issue. For example, some municipalities incorporated in the 1970's to avoid becoming targets for low-income housing.²³ Other municipalities incorporated to avoid having their taxes support their poorer neighbors.²⁴

¹³ Joseph Nicholson, *How Does a City Incorporate?*, LEGAL BEAGLE, <http://legalbeagle.com/4913925-a-city-incorporate.html> [<https://perma.cc/PMW3-YHE8>].

¹⁴ *Id.*

¹⁵ U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, CPH-1-27, MISSOURI: 2010 SUMMARY POPULATION AND HOUSING CHARACTERISTICS 204 (2012), <ftp://ftp2.census.gov/library/publications/2012/dec/cph-1-27.pdf> [<https://perma.cc/WPG7-VH9N>].

¹⁶ *Id.* at 176.

¹⁷ Peter Coy, *The County Map That Explains Ferguson's Tragic Discord*, BLOOMBERG BUSINESSWEEK (Aug. 15, 2014), <https://www.bloomberg.com/news/articles/2014-08-15/how-st-dot-louis-countys-map-explains-fergusons-racial-discord> [on file with *Ohio State Law Journal*].

¹⁸ *Id.*

¹⁹ See Sterling Levy, *Small, 'Adorable' Municipal Governments Abound in St. Louis*, ST. LOUIS GLOBE DEMOCRAT (June 24, 2010), <https://main.stlpartnership.com/06-24-10-small-adorable-municipal-governments-abound-in-st-louis.html> [<https://perma.cc/5SN2-TAWU>].

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Coy, *supra* note 17.

The result of this incorporation mania is that many of St. Louis's municipalities are now highly divided by race and income.²⁵ The process repeated itself in St. Louis many times throughout the twentieth century—as more minority groups moved into an area, the white population moved away and reincorporated somewhere else, taking its tax base with it.²⁶ The fragmented landscape of municipalities in St. Louis also helps explain why Ferguson experienced a violent riot after the tragic death of unarmed teenager Michael Brown.²⁷ Cities like Ferguson that were robbed of their tax base when the white population began to leave and reincorporate elsewhere, are comparatively deindustrialized, and as a result, develop inequitably to surrounding cities with higher tax bases.²⁸ A person starting a business or new development is disincentivized from building it in these poorer cities, because doing so means their own city won't capture the tax revenue from the project.²⁹ As a result, the poorer cities offer fewer job opportunities, so residents must travel further to find work. In turn, the lack of work also contributes to the overall disparity between the higher and lower-tax-based cities.³⁰

This is not to say that St. Louis's poorer cities like Ferguson have no hope of becoming more prosperous. Though it is almost impossible to un-incorporate in Missouri, cooperation efforts across the region could work to better disperse resources.³¹

IV. URBAN PLANNING AND HEALTH IN ST. LOUIS COUNTY

St. Louis County's incorporation past not only sprung out of a contest between economic classes, but involves a history of segregation as well.³² Though in 1917 the Supreme Court declared racial zoning ordinances unconstitutional, other “backdoor” approaches allowed racially segregating practices to continue in St. Louis for decades longer.³³ One approach was to prohibit housing uses that black people could afford in all-white areas of the county.³⁴ In addition, private property owners placed deed restrictions on their properties that prohibited the properties from being sold or rented to black people.³⁵ Integrated low-income housing was replaced with segregated public housing in some areas, and urban renewal projects were undertaken in black

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Coy, *supra* note 17.

³¹ *Id.*

³² Elise C. Boddie, *Adaptive Discrimination*, 94 N.C. L. REV. 1235, 1270–71 (2016).

³³ *Id.* at 1268.

³⁴ See *id.* (listing the prohibition multi-family homes as an example of “backdoor” approaches to racial segregation in St. Louis).

³⁵ *Id.*

neighborhoods where homes were demolished and the residents were forced to move somewhere else.³⁶

City planners took it even further, however, and ensured that black neighborhoods would be located near undesirable commercial properties such as taverns, liquor stores, and brothels.³⁷ In doing so, the planners ensured that these residential properties would be ineligible for federally backed mortgages, making it even harder for black people to own their own homes.³⁸ By implication, the Federal Government was investing much more in white communities than in black communities.³⁹ This growth prompted private investment in the white communities as well, while the black communities continued to decline.⁴⁰ For example, services like trash pickup and emergency response were cut in many black communities.⁴¹

As a result, St. Louis County's black population was forced to move to the northern part of the county where Ferguson is now located. Northern St. Louis County was the only part of the county where discriminatory zoning practices were not used, and because discriminatory real estate practices closed off the Southern part of the county to black people, many had no choice but to move.⁴² By this point, the county represented a plethora of small municipalities.⁴³ What began as a series of targeted moves to keep the county racially segregated culminated in a thick competition for tax revenue: "Originally designed in part to perpetuate racial segregation, the patchwork of separate jurisdictions meant that small towns and cities were forced to compete for a limited pool of tax revenue, leaving fewer fiscal resources for services that were already reduced as a result of the relatively small tax base."⁴⁴

It is important to expel the myth that "white flight" created the cities as they are today in St. Louis County. The scenario is much like that of the "chicken or the egg" analogy. Many argue that as black people moved into a neighborhood, the white population moved out, taking its tax dollars with them and leaving behind the black population that was struggling to get away from the poorer schools.⁴⁵ These scholars argue that discriminatory real estate agents that deterred black home buyers from buying in traditionally white neighborhoods, in combination with white flight, are what steered St. Louis County's black

³⁶ Richard Rothstein, *The Making of Ferguson*, 24 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 165, 166, 193 (2015).

³⁷ Boddie, *supra* note 32, at 1268–69.

³⁸ *Id.* at 1269.

³⁹ *Id.*

⁴⁰ *Id.* at 1269–70.

⁴¹ *Id.* at 1270.

⁴² *Id.*

⁴³ Boddie, *supra* note 32, at 1270–71.

⁴⁴ *Id.* (footnotes omitted).

⁴⁵ Rothstein, *supra* note 36, at 165.

population towards the northern part of the county and ultimately created the disparity among the cities that we have today.⁴⁶

In actuality, the government's racially discriminatory practices contributed to the decline of black neighborhoods. Discriminatory zoning practices, refusing to back mortgages for black homebuyers, federal requirements for exclusory property deeds, subsidies for segregated land development, and more ultimately lead to overburdened and overpopulated black neighborhoods.⁴⁷

The white population began to associate black people with these poor community characteristics, and moved away from neighborhoods where black people moved in to escape the deplorable conditions.⁴⁸ Thus, rather than white flight causing the cities' decline, the cities' decline created a misguided fear among the white population that black people moving into their neighborhoods meant the neighborhood was destined for decay.⁴⁹

V. CREATION OF CITIES ON A NATIONAL SCALE

St. Louis County, Missouri is not the only place in America where municipalities are annexed for political or even racist reasons. In fact, several studies have documented these types of annexation patterns across the country—from the South all the way to California.

There are many reasons why a municipality may choose to annex.⁵⁰ From the municipality's side, it entitles it to property taxes, while property owners gain access to much needed city services like trash, water, and sewer service.⁵¹

A. Annexation Patterns in the South

Though the American South is often considered to be the "heart" of racism in the United States, on account of history dating back to the Civil War, one study showed that there was little empirical evidence for systematic exclusion of black people in annexation decisions, as was previously thought.⁵² The study by Lichter et al. covered the "Old South," including Georgia, North Carolina, South Carolina, Virginia, Alabama, Louisiana, Mississippi, and Arkansas.⁵³ The first question that the Lichter et al. study looked at was the racial composition

⁴⁶ *Id.*

⁴⁷ *Id.* at 166.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See Craig Chamberlain, *Illinois Professors Find That Ethnicity Doesn't Appear to Affect Annexation Decisions Like Race Does*, ILL. NEWS BUREAU: SOC. SCI. (Sept. 30, 2014, 9:00 AM), <https://news.illinois.edu/blog/view/6367/204510> [<https://perma.cc/UP44-KT76>].

⁵¹ *Id.*

⁵² Daniel T. Lichter et al., *Municipal Underbounding: Annexation and Racial Exclusion in Small Southern Towns*, 72 RURAL SOC. 47, 58 (2007).

⁵³ *Id.* at 51.

of the areas annexed in the study period of 1990–2000.⁵⁴ Surprisingly, the results showed that the average percent black population in the annexed territory of the small towns was 22.4%.⁵⁵ Additionally, “the percentage black [population] was *lower* in the non-annexed territory than in the annexed territory (20.7% vs. 26.6%).”⁵⁶

However, Lichter et al. are quick to note that their study produced findings anomalous to similar studies in the past.⁵⁷ They offer some possible explanations for their findings.⁵⁸ One possibility may be that rural communities dodge annexation if the “fringe” areas, the areas at the edges of the municipality or area to be annexed, have a high population of black people.⁵⁹ They may also avoid annexation if they do not have a legal justification for selectively incorporating white fringe areas and excluding black fringe areas.⁶⁰ Although, it is to be noted that Lichter et al. also looked at the racial composition of areas that did not annex compared with the racial composition of their fringe population to see if either of those explanations could be true for the areas studied.⁶¹ The results showed little evidence of a tendency of white populations to resist annexation into majority black areas, at the least.⁶² The Lichter et al. study also compared the racial makeup of fringe areas in annexed versus non-annexed areas.⁶³ The results showed that the communities that did not annex had higher black populations in their fringe areas.⁶⁴

Lichter et al. additionally explain that though at first glance it seems that race is the deciding factor in annexation decisions, there may be other factors at play that are “masked” by race.⁶⁵ For example, economic and political factors.⁶⁶ The Lichter et al. study posits that communities may only avoid annexation when the “threat” posed by the black populations, in the form of economic or political motivations, is high.⁶⁷ As for conclusions drawn from this work, the “results are consistent with the conclusion that racial exclusion through annexation is perhaps less widespread than it has been portrayed in previous studies.”⁶⁸

⁵⁴ *Id.* at 57.

⁵⁵ *Id.*

⁵⁶ *Id.* at 58 (emphasis in original).

⁵⁷ *Id.*

⁵⁸ Lichter et al., *supra* note 52, at 58.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 59.

⁶⁴ Lichter et al., *supra* note 52, at 59.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 60.

⁶⁸ *Id.* at 67.

B. *Annexation Patterns in the American Midwest*

Based on perceived race-based annexation patterns in the American South (prior to the Lichter et al. study), Professors Wilson and Edwards sought to discover if the annexation patterns in the Midwest followed similar patterns.⁶⁹ The professors posit that the power associated with annexation decisions is “one of the more effective devices in the growth management toolbox.”⁷⁰ Annexation may also be used competitively to avoid future annexation by a less desirable municipality.⁷¹ But not all residents want to be annexed into a municipality. One reason may be economic. Property taxes may increase for residents once annexed, which is a financial burden, but also contributes to wider access to public resources.⁷² Other objections may include not wanting a local government, which are often perceived as corrupt, or not wanting to be subject to annoying zoning and property regulations.⁷³

From the municipality’s standpoint, there may be several factors contributing to the decision of whether to annex an area. Though revenue growth is often thought to be one, it depends on the wealth of the municipality.⁷⁴ Wealthier annexing jurisdictions usually get higher tax revenues from real property, which eliminates revenue growth as a force behind annexation.⁷⁵ These same wealthier jurisdictions may seek to avoid annexation as a means of keeping their community an exclusionary “enclave.”⁷⁶

The study looked at ten states across the Midwest to determine if the racial composition of an area affected its chances at annexation.⁷⁷ The results of their study showed that other demographic factors beyond race played a larger role than race or ethnicity did.⁷⁸ In particular, this study looked at annexation patterns in Hispanic populations.⁷⁹

The demographic factors with the biggest impact on whether a community would annex are, first, the ratio of working age adults compared to children and senior citizens, and second, the rates of home ownership.⁸⁰ The age-dependency ratio is important as a means of determining how much money a potential municipality will be spending on senior services and public schools for

⁶⁹ Chamberlain, *supra* note 50.

⁷⁰ Bev Wilson & Mary M. Edwards, *Annexation and Ethnicity in the American Midwest*, 50(3) URB. AFF. REV. 417, 423 (2014).

⁷¹ *Id.*

⁷² *Id.* at 424.

⁷³ *Id.*

⁷⁴ *See id.* at 431.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Chamberlain, *supra* note 50.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

children,⁸¹ to which not all municipalities want to devote valuable taxpayer funds.⁸²

The biggest factors that influenced a particular area's chances of being annexed were population growth in the preceding decade and real estate taxes.⁸³ The professors noted that the positive correlation with real estate taxes runs counter to their expectations, but that it may be explained "as an indicator of the need to bolster revenue at the jurisdictional level."⁸⁴ Another influencing factor was the jurisdiction's "access to an interstate."⁸⁵ Read together, the study evidenced that socioeconomic factors are likely bigger predictors of annexation than ethnicity.⁸⁶ Overall, the professors concluded "that there is little evidence of selective annexation with an ethnic basis in the ten Midwestern states considered between 2000 and 2010."⁸⁷

C. Comparing Annexation Patterns on the East and West Coasts

Another study of annexation patterns looked at different communities in Modesto, California, and three different cities in North Carolina.⁸⁸ Unlike the previously discussed studies, this study also included the concept of Extraterritorial Jurisdiction in its analysis.⁸⁹ Extraterritorial Jurisdiction, or ETJ, is a concept in some states' property regulations that allows municipalities to exercise control over some activities in areas outside their immediate jurisdiction.⁹⁰ The powers that are granted to municipalities through ETJ vary state to state; some only allow police protection outside the city limits, but other states allow ordinance coverage, zoning, and property acquisition as well.⁹¹ In North Carolina, where three of the four studied municipalities are located, municipalities have the same powers over their ETJ territory as they do over their municipality territory.⁹² Technically, ETJ territories are areas that a municipality intends to annex but has not yet annexed. However, the law does not require ETJ territory to be annexed within any particular time frame, and it may be a tool for municipalities to keep control over less desirable areas without

⁸¹ *Id.*

⁸² See Wilson & Edwards, *supra* note 70, at 429 ("[H]igh age-dependency ratio may be in need of public services or infrastructure, and are also likely to contribute less to the tax base . . .").

⁸³ *Id.* at 433–35.

⁸⁴ *Id.* at 435.

⁸⁵ *Id.* at 438.

⁸⁶ *Id.*

⁸⁷ *Id.* at 441.

⁸⁸ Ben Marsh et al., *Institutionalization of Racial Inequality in Local Political Geographies*, 31 URB. GEOGRAPHY 691, 692, 701 (2010).

⁸⁹ *Id.* at 695.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

having to annex them.⁹³ Additionally, once an area has been designated as an ETJ territory by a municipality, it cannot be annexed by another municipality unless the first municipality releases it—another form of control.⁹⁴

The first municipality studied was Mebane, North Carolina.⁹⁵ Surrounding predominantly white Mebane are several majority black neighborhoods that have been present for decades, all with roots dating back to the post-Civil-War era.⁹⁶ Though Mebane has expanded a few times, these communities have never been annexed.⁹⁷ Many of the properties in these neighborhoods suffer from failed septic systems which are beyond repair, and as a result the properties are almost worthless.⁹⁸ Most troubling, however, is that the sewer system map shows that Mebane has extended its sewer service several times to reach more distant areas that it has annexed, while choosing not to extend service into these neighborhoods that desperately need it.⁹⁹

Mebane's discriminatory policies towards the majority black ETJ neighborhoods do not end there, however. A popular, predominantly white golf course community in Mebane, known as The Club at Mill Creek, is separated by a road from White Level, a historically black neighborhood.¹⁰⁰ While Mill Creek gets public services from Mebane and sewer access, in White Level Mebane has made two acres the minimum lot size and not allowed public service access.¹⁰¹ Additionally, Mebane has repeatedly rejected requests from White Level for necessary sewer service access.¹⁰²

In Moore County, North Carolina the predominantly white towns of Aberdeen, Pinehurst, and Southern Pines have been actively annexing other predominantly white areas while noticeably excluding predominantly black areas.¹⁰³ Two of these excluded neighborhoods are Jackson Hamlet and Monroe Town.¹⁰⁴ Though within the ETJ of Pinehurst, these two neighborhoods lack sewer service and a political voice in the control that is exerted over them by the municipality with ETJ power.¹⁰⁵ Similarly, Midway is under the control of Aberdeen but excluded from public services, and Waynor Road and No-Man's Land experience the same troubles under the control of Southern Pines.¹⁰⁶

Besides the public health concern of lack of sewer access and the political health concern of lack of voting, lack of access to public resources means no

⁹³ *Id.* at 696.

⁹⁴ *See* Marsh et al., *supra* note 88, at 696.

⁹⁵ *Id.* at 697.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Marsh et al., *supra* note 88, at 697–98.

¹⁰¹ *Id.* at 698.

¹⁰² *Id.*

¹⁰³ *Id.* at 699.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 699–700.

¹⁰⁶ Marsh et al., *supra* note 88, at 699.

access to city police services.¹⁰⁷ These excluded neighborhoods are provided police services by the county sheriff's department, which means slower response times in emergencies.¹⁰⁸ Deputies must drive through the municipalities and past the city police departments to get to the excluded neighborhoods.¹⁰⁹ Fortunately, as a result of organized petitioning by the residents of the excluded neighborhoods, Southern Pines, Pinehurst, and Aberdeen received Community Development Block Grants to facilitate connecting the municipality sewer system infrastructure to these neighborhoods.¹¹⁰

In Raeford, North Carolina, the case is slightly different. Raeford is actually predominantly black, but the white population keeps control of the town through political control, annexation, and ETJ powers.¹¹¹ Nearby Silver City, which is also predominantly black, is subject to Raeford's ETJ control and thus also has no political voice.¹¹² Annexing Silver City into Raeford would turn the political tide away from an all-white council, a result that is likely disfavored by the existing council.¹¹³ However, unlike the other cities studied, Raeford did extend sewer lines into parts of Silver City without annexing it.¹¹⁴

In Modesto, California, predominantly Hispanic neighborhoods on the outskirts are the ones excluded as a result of selective annexation.¹¹⁵ Originally established as communities of workers in the farm-packing industry, these neighborhoods are shut off from sewer access to nearby Modesto.¹¹⁶ Not only is there no current access to the sewers, but in several of the neighborhoods no connection is possible to the sewer system because of the way it was built in avoidance of these neighborhoods.¹¹⁷ Moreover, a new system is not currently possible because regulations require a minimum of 20,000 square feet to install a new septic system while the average lot size in the excluded neighborhoods is around 7,000 square feet.¹¹⁸ The situation outside of Modesto was so bad that in 2004 the excluded residents sued Modesto in federal court to try to get sidewalks, street lights, sewer access, and public safety services.¹¹⁹

The study served to highlight some issues with ETJ statutes.¹²⁰ ETJ laws may actually encourage selective annexation based on discrimination by way of

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 701.

¹¹¹ *Id.* at 702.

¹¹² Marsh et al., *supra* note 88, at 703.

¹¹³ *See id.*

¹¹⁴ *Id.* at 704.

¹¹⁵ *Id.* at 701.

¹¹⁶ *See id.*

¹¹⁷ *See id.*

¹¹⁸ Marsh et al., *supra* note 88, at 701.

¹¹⁹ *Id.* at 702.

¹²⁰ *Id.* at 705.

economic benefits.¹²¹ Inevitably, municipalities will be more likely to annex those neighborhoods “with the least need for new investment and the greatest return in new tax revenues.”¹²² Thus, discriminatory selective annexation will likely continue as long as municipalities have a choice between annexing wealthier neighborhoods and excluding but controlling poorer ones.¹²³ When one resides in an ETJ territory, not only are they less likely to have access to sewer service and public services, but the value of their homes decline significantly as well.¹²⁴ The ultimate effect of this exclusion is summed up perfectly by Marsh et al.: “By excluding these neighborhoods, the local governments communicated what is obvious to the residents: they are not equal to and are not wanted by the White majority community.”¹²⁵

VI. DISINVESTMENT FROM THE FEDERAL GOVERNMENT

Despite the grim portrayal of health determinants found in urban areas that are exacerbated by discriminatory annexation, the previous administration prioritized the resurgence of cities as economic centers for growth.¹²⁶ In 2013, the Obama Administration introduced “Promise Zones,” a program that awards grants, technical assistance, and tax incentives to impoverished communities¹²⁷ in an effort to jump start the economic outlook of impoverished urban areas.¹²⁸ In addition to federal efforts, local governments and private actors are making strides to maintain urban resources through revitalization efforts.¹²⁹ Urban revitalization is the result of jobs shifting from the suburbs back to the cities, an increased private market revitalization, and a neo-urban population made up of young, affluent professionals.¹³⁰ Largely seen as an enclave of crime and poverty, cities are now beginning to attract middle-class families, thus breathing

¹²¹ *See id.*

¹²² *Id.*

¹²³ *See id.* at 705 (explaining why cities engage in selective annexation).

¹²⁴ Marsh et al., *supra* note 88, at 705–06.

¹²⁵ *Id.* at 705.

¹²⁶ *See* Barack Obama, President, U.S., Remarks by the President on Strengthening the Economy for the Middle Class (Feb. 15, 2013) in <https://obamawhitehouse.archives.gov/the-press-office/2013/02/15/remarks-president-strengthening-economy-middle-class> [<https://perma.cc/734E-E75N>] (discussing the importance of revitalizing cities to the administration).

¹²⁷ *Promise Zones Overview*, U.S. DEP’T HOUSING & URB. DEV., <https://www.hudexchange.info/programs/promise-zones/promise-zones-overview/> [<https://perma.cc/3MGD-RD6P>].

¹²⁸ *Id.*

¹²⁹ *See* J. Peter Byrne & Michael Diamond, *Affordable Housing, Land Tenure, and Urban Policy: The Matrix Revealed*, 34 *FORDHAM URB. L.J.* 527, 527–28 (2007) (discussing how state and local governments are committed to creating affordable housing through a variety of subsidy methods).

¹³⁰ *See* Bethany Y. Li, *Now Is the Time!: Challenging Resegregation and Displacement in the Age of Hypergentrification*, 85 *FORDHAM L. REV.* 1189, 1190–91 (2016) (discussing the recent influx of development and affluent professionals in urban areas).

energy into areas that have been overrun with an array of systematic social and environmental handicaps.¹³¹

However, the election of Donald Trump has dampened the positivity surrounding metropolitan growth. Throughout Donald Trump's campaign, he routinely sought out white, working, middle-class voters—leaving the low-income, minority populations found in cities on the periphery.¹³² The Trump Administration's proposed budget reflects the thrust of his campaign rhetoric. According to the Center on Budget and Policy Priorities (The Center), the President's 2018 fiscal year budget proposes a \$6.2 billion cut to the Department of Housing and Urban Development (HUD).¹³³ This is more than a 13% budget cut to HUD.¹³⁴ "More than 75 percent of [HUD's] budget goes to helping families pay their rent."¹³⁵ An important sector of the rental assistance program is the Housing Choice Vouchers Program that subsidizes payment for a safe and healthy home.¹³⁶ Although the Trump Administration's proposed budget allots \$35 billion for HUD's various rental assistance programs, the budget would cut "programs like the Housing Choice Vouchers Program by at least \$300 million."¹³⁷ These proposed cuts are already proving problematic. According to a new report from the National Low-Income Housing Coalition, the country has a shortage of more than seven million affordable homes for low-income families, and the private sector is not in a position to address this crisis on its own.¹³⁸

Additionally, the proposed budget "eliminates the HOME, Community Development Block Grant (CDBG), and Choice Neighborhoods programs that

¹³¹ See Richard Florida, *Don't Fear the City: Urban America's Crime Drops to the Lowest in 40 Years*, THE ATLANTIC (May 24, 2011), <https://www.theatlantic.com/national/archive/2011/05/dont-fear-the-city-urban-americas-crime-drops-to-lowest-in-40-years/239366/> [<https://perma.cc/M8AG-ZXL7>] ("[U]rban revitalization . . . is bringing relatively prosperous singles, couples, families, and empty nesters into neighborhoods that had been in decline in years past, improving neighborhood quality and safety.").

¹³² See Ross Douthat, *The White Strategy: Trump's Winning Coalition and its Weaknesses*, N.Y. TIMES (Aug. 11, 2018), <https://www.nytimes.com/2018/08/11/opinion/sunday/the-white-strategy.html> [<https://perma.cc/QPG2-JUB9>] (explaining Trump's strategy of "deliberate racial polarization" and focus on white, middle class voters).

¹³³ Douglas Rice, *Trump Budget Will Increase Homelessness, End Federal Role in Community Development*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 16, 2017), <https://www.cbpp.org/blog/trump-budget-will-increase-homelessness-end-federal-role-in-community-development> [<https://perma.cc/9LDD-FLHH>].

¹³⁴ Gregory Krieg & Will Mullery, *Trump's Budget by the Numbers: What Gets Cut and Why*, CNN (May 23, 2017), <http://www.cnn.com/2017/05/23/politics/trump-budget-cuts-programs/index.html> [<https://perma.cc/T994-CZ2F>].

¹³⁵ David J. Reiss, *Trump's Budget Proposal Is Bad News for Housing Across the Nation*, THE HILL (Mar. 16, 2017), <http://thehill.com/blogs/pundits-blog/economy-budget/324211-how-trumps-budget-cuts-could-affect-housing-for-thousands> [<https://perma.cc/VWD3-NM7D>].

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

give flexible aid to poor rural and urban communities.”¹³⁹ HUD’s website states that “the CDBG program works to ensure decent affordable housing, to provide services to the most vulnerable in our communities, and to create jobs through the expansion and retention of businesses.”¹⁴⁰ The elimination of these programs further handicaps at-risk urban populations. The Center concludes that poor populations will lose in excess of “\$4.1 billion of HUD funds needed to improve basic infrastructure like streets and water and sewer lines, promote economic development, and build or rehabilitate affordable housing.”¹⁴¹

In short, the Trump Administration’s proposed budget cuts could be utterly disastrous for the low-income urban populace. The federal cuts to HUD and other block grants shift the burden of urban areas to local and state governments.¹⁴² A city’s preferred way to ensure urban redevelopment and allow cities to capitalize on the resources present in their territory is through zoning efforts.¹⁴³ To breathe economic life into dilapidated inner cities, cities are almost required to zone parcels of land for commercial use.¹⁴⁴ “Moving stores to the city is obviously something that cities desire, and it is defensible purely on that basis. By increasing the tax base, generating jobs, and attracting foot traffic that makes streets safer, bringing in large stores can create obvious benefits for a city.”¹⁴⁵ Cities have to be careful not to grow in such a way that the sudden influx of affluent populations increase property prices, ultimately isolating low-income communities.¹⁴⁶ One method used by Washington, D.C., to combat this potential isolation are mixed-income housing projects which “intentionally allocate units to families at different income levels, often in bands based on percentages of area median income.”¹⁴⁷

VII. CONCLUSION

Revitalizing urban areas is both a delicate and complex task—every decision having potential adverse effects for thousands of people.¹⁴⁸ Urban

¹³⁹ Rice, *supra* note 133.

¹⁴⁰ *Community Development Block Grant Program-CDBG*, U.S. DEP’T HOUSING & URB. DEV., https://www.hud.gov/program_offices/comm_planning/community_development/programs [<https://perma.cc/AYB2-JSM8>].

¹⁴¹ Rice, *supra* note 133.

¹⁴² *See id.*

¹⁴³ Li, *supra* note 130, at 1203.

¹⁴⁴ *See generally* Gideon Parchomovsky & Peter Siegelman, *Cities, Property, and Positive Externalities*, 54 WM. & MARY L. REV. 211 (2012) (analyzing the ability of commercial zoning to revitalize city centers).

¹⁴⁵ *Id.* at 258.

¹⁴⁶ *See* Li, *supra* note 130, at 1196 (explaining how, while low-income neighborhoods need resources, some practices can actually displace low-income residents rather than revitalize the neighborhood).

¹⁴⁷ Byrne & Diamond, *supra* note 129, at 555–56.

¹⁴⁸ *See* Li, *supra* note 130, at 1224 (discussing the negative impacts of some revitalization plans on minority communities).

planner Sharon Zukin notes, “[T]he right to produce authentic places in both senses, historically old and creatively new, offers an alternative to the kind of growth that pushes many groups out.”¹⁴⁹ The role of the state in pursuing such alternatives is critical. Bureaucracy that runs rampant at the local level can be rooted in self-interest.¹⁵⁰ A positive state model approach, as described by Robert Pecorella in *Property Rights, State Police Power, and the Takings Clause: The Evolution Toward Dysfunctional Land Use Management*, adheres to Dillon’s Rule.¹⁵¹ Dillon’s Rule prohibits local governments from exercising power outside of those granted to them by state officials.¹⁵² Even in states such as Georgia, where Dillon’s Rule is actively applied, the state becomes less involved in the area of annexation.¹⁵³

Dillon’s Rule has been applied to municipal powers throughout Georgia’s judicial history.¹⁵⁴ Original incorporation of municipalities is governed by Title 36, Chapter 31 of the Georgia Code; subsections 2 through 5 articulate the procedural and structural requirements for incorporation, even including mandates for minimal requisite municipal activity for maintaining municipality.¹⁵⁵ However, with regard to annexation authority, the state has become less involved in municipal affairs. As is observed by the Georgia Court of Appeals in *City of Brookhaven v. City of Chamblee*, following the amendment of the Georgia Constitution in 1954 under which the General Assembly was first allowed to delegate its authority to municipalities, legislation was passed which

¹⁴⁹ *Id.* at 1242.

¹⁵⁰ See Troutt, *supra* note 4, at 1169 (explaining how localism promotes “self-interested, irrational, and inefficient” priorities).

¹⁵¹ See Robert F. Pecorella, *Property Rights, State Police Powers, and the Takings Clause: The Evolution Toward Dysfunctional Land Use Management*, 44 *FORDHAM URB. L.J.* 59, 72 (2017) (describing the process of states allocating responsibilities to local governments); see also *Dillon’s Rule: Good or Bad for Local Governments?*, LEAGUE WOMEN VOTERS FAIRFAX AREA EDUC. FUND, S-1 (Oct. 2004), <http://www.lwv-fairfax.org/files/lwv-dillon-dtp-99041.pdf> [<https://perma.cc/3QKU-9BUL>] (explaining the purpose and evolution of Dillon’s Rule). See generally Richard Briffault, *Home Rule, Majority Rule, and Dillon’s Rule*, 67 *CHI. KENT L. REV.* 1011 (1991) (critiquing Dillon’s rule and another author’s defense of the rule).

¹⁵² Pecorella, *supra* note 151, at 72; see also Richard Briffault, *Principal Provisions of State Constitutions: A Brief Overview*, in *DECISION 1997: CONSTITUTIONAL CHANGE IN NEW YORK* 21, 27 (Gerald Benjamin & Henrik N. Dullea, eds., 1997) (“Traditionally, local governments enjoyed only those powers expressly delegated by their state.”).

¹⁵³ See, e.g., *City of Brookhaven v. City of Chamblee*, 765 S.E.2d 33 (Ga. Ct. App. 2014).

¹⁵⁴ See *Jenkins v. Jones*, 75 S.E.2d 815, 819 (Ga. 1953) (applying Dillon’s Rule to find an Atlanta city ordinance, which criminalized an action already punishable by state law, unconstitutional).

¹⁵⁵ GA. CODE ANN. §§ 36-31-2 to 5 (2012). Section 36-31-2 mandates timely filing of certification with the Department of Community affairs for any new municipal corporation (after two years from the date of incorporation) to meet the minimum standards for active municipalities under section 36-31-7.1 of the Georgia Code.

provided three methods through which municipalities were granted authority to annex contiguous land.¹⁵⁶

(1) The “100% method,” by which a municipality may annex adjoining land upon application by all the owners of the land . . . (2) the “60% method,” by which a municipality may annex adjoining land upon application by a minimum of 60% of adjoining land owners . . . and (3) the “Resolution and Referendum method,” by which a municipality may, on its own initiative, annex contiguous lands meeting certain requirements, by resolution and referendum . . .¹⁵⁷

If we learn anything from the state takeover of the city of Flint, Michigan, it is that a complete usurpation of local control does not promise positive change, particularly with respect to government policies that adversely affect the health of minority communities.¹⁵⁸ However, an objective approach to annexation from a higher level than that of a municipality can provide context and standard for creation that will not exclude vulnerable populations from public services and resources.

¹⁵⁶ *City of Brookhaven*, 765 S.E.2d at 36.

¹⁵⁷ *Id.*

¹⁵⁸ *Flint Water Crisis Fast Facts*, CNN (Apr. 8, 2018), <https://www.cnn.com/2016/03/04/us/flint-water-crisis-fast-facts/index.html> [<https://perma.cc/VFR2-MJ9E>].

